NRLN
NATIONAL RETIREE LEGISLATIVE NETWORK

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NRLN is a coalition of 30 Retiree Associations advocating the rights of more than 2 million American retirees from…
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March 5, 2010

The Honorable Sander Levin, Chairman
Ways & Means Committee
United States House of Representatives
1236 Longworth House Office Building
Washington, DC 20515-2212

Dear Chairman Levin:

Big companies and big labor unions are lobbying Congress for temporary relief from Pension Protection Act of 2006 (PPA) pension plan funding requirements due to the steep market slide in 2008 that is still having an impact on pension assets. Many companies contend that borrowing to contribute to their pension plans is out of the question due to tight credit markets.

The National Retiree Legislative Network does not want to force contributions to pension plans that would cause irreparable harm to the companies, trigger layoffs or result in companies declaring bankruptcy and default on pension plans. However, there should be a quid pro quo—companies may receive temporary funding relief and retirees gain the protection of their pension assets from being used for non-pension expenses. It should be noted that while great emphasis has been placed on the temporary nature of this relief, it will have been granted to companies for the second year in a row. Even if temporary, it is still a strong benefit.

H.R. 3936, the Preserve Benefits and Jobs Act of 2009, contains a provision that puts pension asset protection on the right track. The provision, Section 111, would help protect the pensions of retirees and future retirees by limiting the practice of using pension assets for purposes other than those intended under ERISA. Representative Earl Pomeroy and Pat Tiberi, who introduced H.R. 3936, have placed the proper emphasis on protecting pension plan assets in Section 111.

The language in Section 111 relating to a company's ability to amend its pension plan states, in part: *"No ad hoc amendment to a defined benefit plan which is a single employer plan which has the effect of increasing liabilities of the plan by reason of increases in benefits, establishment of new benefits, changing the rate of benefit accrual, or changing the rate of which benefits become nonforfeitable may take effect during the plan year if the adjusted funding target attainment percentage for such plan year is— ''(I) less than 120 percent, or ''(II) would be less than 120 percent taking into account such amendment."*

Actions by companies known as "back door reversions" represent a widespread practice to circumvent the Congressional policy against reverting pension assets for corporate purposes. It simply doesn't make sense for Congress to authorize a funding hiatus without simultaneously closing this "back door."

These "back door reversions" practices place pension plans at risk to be terminated. It is time to end this pilfering of defined plan pension assets. These actions threaten the security of pension plans and the potential is great that the Pension Benefits Guaranty Corp. (PBGC) might have to take over the plan in the future.

Furthermore, depleted assets reduce the likelihood the plan will ever generate surplus assets that can be used to offset corporate health care costs for retirees or be available for pension Cost of Living Adjustments (COLAs), a benefit that non-government retirees seldom receive.

The NRLN has researched and written a whitepaper on how companies are misusing pension plan assets and provides our proposed amendments to the Pension Protection Act of 2006 to prevent the abuses. I have attached the Executive Summary from the whitepaper. If you would like to receive a copy of the entire whitepaper, please contact Marta Bascom, the NRLN's Executive Director, on (703) 863-9611 or by email at marta.bascom@linkspace.net .

Please don't miss the opportunity on pension funding relief to enhance the financial security of America's retirees by including pension asset protection. Together, funding relief and Section 111 of H.R. 3936 offer a very narrowly-focused synergy of corporate financial relief and pension asset security without any cost to corporations or taxpayers.

Sincerely,

Bill Kadereit

President, National Retiree Legislative Network

Attachment

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Back Door Reversions:

Draining Pension Assets for Severance and Other Corporate Purposes Threatens Retirement Security

Executive Summary

The use of pension assets to make severance payments during a corporate restructuring is the largest and most widespread "back door reversion" by which some companies are seeking to circumvent the Congressional policy against reverting pension assets for corporate purposes. When pension funds were used to finance hostile takeovers and the mass layoffs that typically followed, in 1990 Congress stopped the practice by imposing a 50 percent excise tax on pension reversions. But today's "back door reversions" are more insidious. Although ERISA explicitly prohibits the use of qualified pension assets for "layoff benefits," companies can amend a plan at any time not merely to offer older workers enhanced early retirement benefits (by awarding extra years of service credit), but even to offer lump sum severance payments equal to a year's salary or more as part of a corporate restructuring.

The 2006 Pension Protection Act tightened up on this practice somewhat by requiring plan sponsors to pre-fund a plan amendment that increases benefit liabilities to the extent the plan's funding level would fall below 80 percent (after taking account of the new benefit liability). However, as the 2008 stock market meltdown demonstrated, a plan that is only 80 percent funded during a bull market could easily end up below 60 percent funded in a bear market – and in default with the PBGC if the plan sponsor declares bankruptcy. Moreover, any significant reduction below full funding not only leaves all plan participants insecure, it also reduces the ability of the plan to build a surplus that could be used to grant cost-of-living adjustments to longtime retirees, whose fixed monthly benefits erode with inflation, or to offset the cost of retiree health benefits through a Section 420 transfer.

The trend toward distressed companies using employee pension assets to pay severance costs – instead of relying on a restructuring reserve or other corporate assets – is not new to the current financial crisis. Lucent, United Airlines, AT&T, Verizon, Qwest, Federal Express, Delta and Delphi are among the other companies that have tapped pension assets to pay corporate restructuring costs. Some of these companies drained pension assets for severance payments as they spiraled downhill toward bankruptcy and an eventual taxpayer bailout courtesy of the PBGC. Other companies, left under-funded, cut other retiree benefits across the board. And some others, although their plans remained solvent, used up "surplus" assets that could have benefitted the vast majority of plan participants if used instead for cost-of-living adjustments or offset the cost of retiree health care benefits. In the current crisis, General Motors used pension assets to pay for billions in severance payments during 2008 – and ended up with such a dangerous degree of under-funding that in early 2009 the Treasury Department restricted the practice as a condition of the federal bailout loan package.

The most effective way for Congress to protect plan participants (and taxpayers) from unfunded liabilities from severance, layoff or any other benefit increase is simply to increase the target funding level threshold required for unfunded benefit increases and lump sum payouts from the 80 percent level, currently required under the PPA, to 120 percent. Severance or other benefit increases to selected individuals that are not funded should be paid out of the company's operating expenses, not from the pension trust. This would not limit the ability of plan sponsors to enhance benefits. What it does do is require companies to currently fund lump sum payouts or other benefit increases that would otherwise cause the plan to become under-funded or worsen its level of under-funding. Amendments increasing benefits that are collectively bargained or negotiated between a plan sponsor and bona fide union representatives, or in the context of a jointly-trusteed Taft-Hartley plan, should be exempted from this more restrictive funding level.

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